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CANADA'S MILITARY EXPORTS POLICY:
A Response to the Export Controls Policy Announced September 10, 1986

A Brief prepared for
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SUMMARY

The attached brief examines the Export Controls Policy announced by the Canadian government, September 10, 1986. It argues that the new guidelines will not be effective in preventing the export of military commodities to countries known to be serious human rights violators, or to countries involved in or under imminent threat of hostilities.

The following issues are examined:

1. There is no blanket prohibition on the export of military commodities to human rights violators. Instead, the government intends to assess the likelihood of equipment being used directly against civilians. The brief outlines the ways in which this qualification seriously weakens the control system.

2. The control of military exports to countries involved in hostilities is also qualified to the point of making it irrelevant.

3. Exports of strategic equipment are not banned to human rights violator countries and to countries involved in hostilities. The brief argues that strategic goods can play prominent roles in the abuse of human rights, and can contribute to the belligerent capacity of countries involved in hostilities.

4. Exports of military and strategic goods to South Africa appear to be denied only to South African military end-users and government departments and agencies. The policy continues to permit the sale to the South African private sector of strategic equipment (and perhaps also of military goods), thus inviting the possibility of diversion of these goods to military or police uses.

5. Military commodities exported from Canada cannot be resold to a third country without Canadian approval. However, there is no end-use control over the sale of military components used in the manufacture of a weapons system. The brief argues that the reasons given for this distinction are inadequate.

6. The guidelines for export controls are to be implemented in secret, without opportunity for public or parliamentary scrutiny. The brief argues that there should be disclosure of all Canadian military exports after the fact, and that the identity of countries to which military exports are controlled should be public. There should be an annual public review of the implementation of the military exports policy.

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A number of recent press reports of Canadian military exports suggest to us that the current export control system is not effective in preventing the export of Canadian military commodities to countries that "have a persistent record of serious violations of the human rights of their citizens," or to "countries involved in or under imminent threat of hostilities." There is growing evidence that Canadian military commodities are going to destinations in violation of Canadian military export guidelines. Furthermore, we are concerned that the new guidelines announced September 10, 1986 will not make the export control system more effective in preventing such exports.

The purpose of this brief is to raise several concerns regarding Canadian military exports to countries known to be serious human rights violators and countries involved in hostilities. It adds to our letter of January 10, 1986 and the recommendations we made then for more effective control and public monitoring of military exports.

Military Exports to Human Rights Violators

We have noted a recent press report (Kitchener-Waterloo Record, January 23, 1987), in which Mr. David Adam, director of the Export Control Division of the Department of External Affairs, is reported as responding to reports of permits for military exports to Syria, Chile, Pakistan and Indonesia with the comment that such permits might have been granted before the government changed its arms exports policy last September. The implication is that under the changed guidelines such permits would not be granted. We see no evidence for such an expectation, and in the light of the secrecy surrounding Canadian military exports, and for reasons we will outline below, we have little confidence that such an implication is warranted. Mr. Adam is then reported as also saying that the new regulations forbid the shipments of military goods to countries with "persistent records of human rights violations". This claim is not supported by the guidelines themselves, which state explicitly that the government is "prepared to consider permits for military goods to (countries with bad human rights records)" [Question 10, "Export Controls Policy Questions and Answers"].

There is no blanket prohibition on the export of military commodities (arms, ammunition, and equipment "specially designed for military purposes") to countries acknowledged by Canada to be persistent and serious violators of the human rights of their citizens. Instead, the focus is on the "close control" of exports of military equipment, and involves an assessment of the likelihood that it would be used directly against civilians. We consider this qualification to seriously weaken the control system on two counts.

First, it assumes that the exporter bears responsibility only for that equipment which enhances the importing country's immediate capacity for repression. This ignores the fact that a regime's repressive capacity is also politically based. The export of any military commodities, regardless of their particular function, to a repressive military regime, indicates political support for that regime and thus enhances its overall influence

within the country, as well as its self-assurance in carrying out repressive measures.

Second, it assumes that it is possible to make clear distinctions between military equipment that will be "used against the civilian population" and that which will not. The principle invoked is that the Canadian government

> "supports the right of nations to defend themselves against external aggression. What is objectionable to us is that equipment which should be used for such a purpose is turned against civilians within the country."

No detail is provided as to how the Canadian government could determine how a human rights violator regime intends to use military equipment, or how the Canadian government could prevent the diversion of equipment, once exported, from defensive purposes to repression of the civilian population.

By refusing to impose a blanket prohibition on the sale of military commodities to human rights violators, the guidelines actually permit Canadian firms to supply a wide range of equipment to military forces whose overt mission includes the widespread violation of human rights.

Military exports to countries involved in hostilities

The evidence available indicates that there is also no effective prohibition on the export of military commodities to "countries involved in or under imminent threat of hostilities". During the years 1980 to 1984 Canadian military commodities went to among others Burma, Guatemala, Honduras, India, Indonesia, Israel, South Korea, Malaysia, Pakistan, Peru, Philippines, Syria and Thailand -- all countries either involved in active hostilities, or are parties to enduring conflicts which frequently threaten to erupt into open hostilities. According to the guideline, the policy against the sales of military commodities to countries involved in hostilities is unqualified. The guidelines indicate no mitigating circumstances under which exports to such countries would be considered acceptable.

In practice, however, the guideline is qualified to the point of making it irrelevant. In the first instance, the guideline, in practice, does not apply to exports to the United States or other NATO allies (currently more than 90 percent of exports). In the case of third world customers, the guideline is apparently regularly overruled by economic and political considerations. It can hardly be disputed that during 1980 to 1984 Indonesia was involved in hostilities, yet during the same period Indonesia was the object of special military marketing efforts by the Department of External Affairs. The Philippines were similarly involved in hostilities, yet regularly received, with Canadian government encouragement, Canadian military commodities. It is clear to us that this guideline has little meaning when it does not interfere with the export of military commodities to countries such as Indonesia, the Philippines, Israel, South Korea and others already noted.

Exports of strategic goods to human rights violator countries, and to countries involved in hostilities

It is stated that the new policy will restrict the export of "civilian" strategic equipment only to COCOM-proscribed destinations. In the background document it is argued specifically that strategic equipment need not be denied to human rights violators countries. No reasons are given as to why strategic equipment will not be denied to countries involved in hostilities.

Strategic goods are denied to COCOM-proscribed destinations as part of "an embargo on all equipment and technology which would enhance the military potential of possible adversaries." Such goods should also be denied to human rights violator countries and to countries involved in hostilities.

The answer to question three (of the "Export Controls Policy Questions and Answers") says that military forces "require a variety of non-military equipment", and then cites examples which include communications equipment and trucks, adding that such equipment "add(s) nothing to the offensive or belligerent capacity of the military or para-military organization." Communications and transportation are key elements in determining the capabilities of any armed force. Without adequate communication or transportation capabilities any army would soon find both its defensive and offensive capabilities severely restricted. Is a computer that stores names of, and information about, dissidents marked for detention or disappearance not a part of the repressive apparatus? Is a fleet of trucks that hauls troops to their assignments not a part of an army's offensive or belligerent capacity? And is a communications systems that identifies the location of civilian targets on behalf of a repressive army not part of the equipment that is used against civilians?

We cannot accept the statement made in the response to question nine, that "strategic goods are not (by their nature) used to abuse human rights". Indeed, strategic goods, including items such as computers and communications and photographic equipment can play prominent roles in the abuse of human rights.

Nor can we accept the implied argument that strategic goods will not contribute to the belligerent capacity of countries involved in or under imminent threat of hostilities.

Exports of military and strategic goods to South Africa

The "Background Paper" states that "Canadian policy will continue to prohibit the export of military and strategic goods to the Republic of South Africa." The "Export Controls Policy Questions and Answers" paper, Q6, indicates a more qualified policy. It states that:

> We in Canada have agreed to limit exports of all military goods to military end-users (emphasis ours) in accordance with UN Security Council Resolution 418 (1977), and more recently, we decided to refuse to export strategic and military goods to all RSA departments and agencies.

The 1977 mandatory arms embargo requires that "all States cease forthwith any provision to South Africa of arms and related materiel of all types...." It does not suggest that the restriction applies only to "military end-users" in South Africa.

We had previously understood that all military goods and technologies were banned for export to South Africa regardless of the end-user. This is called into question by the above statement of September 10, 1986. In fact, unless the above statement is an error, it appears to represent an astonishing weakening of Canadian implementation of the mandatory arms embargo.

We had known that previous Government policy regarding the export of strategic or dual purpose equipment permitted the export of such equipment unless there was "evidence that the equipment in question is to be used for military purposes or against the civilian population" (letter of June 1982 to the Taskforce from the Secretary of State for External Affairs and the Minister of State, International Trade). In October, 1985, the Nassau Commonwealth Accord called for a ban on the sale and export of computer equipment capable of use by the South African police, military or security forces. We hoped that the Canadian government would then tighten its policy. However, in an announcement of February 1986, the Government stated that it had tightened its application of the UN arms embargo by restricting exports of "sensitive equipment such as computers to the police, the armed forces and other South African departments and agencies involved in the enforcement of apartheid." The policy thus continued to permit the sale to the South African private sector of sensitive equipment such as computers which might be diverted to military or police uses. This policy remains unchanged in the September 1986 guidelines.

End-Use controls

We understand that under current policy Canada controls the ultimate destination of Canadian military commodities until such time as they are "transformed" in a recipient country. Hence, in the case of the sale of military components to Switzerland, for example, the Canadian firm would require an export permit to sell the goods to Switzerland, and would require from the Swiss recipient of the goods an assurance that the goods were to be used in Switzerland for the purpose indicated (the instrument for this would be either an "import certificate" or an "end-use certificate"). Thus the Swiss importer would not be permitted to take the Canadian military commodity and sell it to a third country without Canadian approval. If, however, the Swiss importer used the Canadian military commodity for the purpose of manufacturing a weapon system, the Swiss would be free to export the completed weapon system to any country without Canadian approval.

In the case of major components, we find this to be an inadequate control of the ultimate destiny of Canadian military components. The Canadian government has stated that it does not control the ultimate destination of "transformed" components because it opposes the practice of extraterritoriality. However, by controlling the ultimate destination of goods that are not "transformed", Canadian is in fact practicing extraterritoriality and does not seem to us to be opposed to it in principle. In the case of major components or subsystems (such as aircraft engines), Canada should insist on controlling their ultimate destination, regardless of whether they have been "transformed".

Disclosure, and secrecy of implementation

A most urgent concern is that the guidelines, however flawed, are to implemented in strict secrecy. There will be no public confidence that the announced guidelines are being implemented when there is no opportunity for public or Parliamentary scrutiny. As it is, Parliament and the Canadian people must rely for arms export information on occasional government announcements, intermittent foreign and industry sources, and leaks. To date, the evidence gathered in this manner further undermines our confidence in the guidelines. During the years 1980 to 1984, it is our understanding that Canadian military commodities went to, among others, the following countries cited for serious human rights violations: Argentina, Chile, Guatemala, Indonesia, South Korea, Pakistan, Paraguay, and the Philippines. We have also noted above the list of countries involved in hostilities to which military commodities were exported in the same period.

Disclosure of Sales:

We are sympathetic to the Department's reluctance to publicly disclose export permits at the time they are granted. We realize that permits are sought by companies on the basis of prospective sales, rather than on the basis of confirmed sales, and that public disclosure of permits during the course of contract negotiations could represent an unwarranted interference in the affairs of Canadian business firms. On the other hand, military commodities are a special class of goods that requires public control. Firms that export military goods must be held publicly accountable in ways that exporters of civilian goods are not accountable. Effective public control can take place only when full public and Parliamentary scrutiny is possible. This means full public disclosure of military exports. We therefore propose that public disclosure of Canadian military exports be based, not on permits for possible sales, but on actual sales. All Canadian military exports should therefore be disclosed by the government, after the fact. Such disclosure should include the complete details of the transaction -- i.e. the recipient country, the supplier company, the commodities supplied, the invoice price, and the date of the transaction.

By disclosing this information after the fact, perhaps up to a year after the transaction, there would be no possibility that the disclosure would intrude on the rights of Canadian firms to do business without interference. On the other hand, disclosure in this way would still facilitate full public scrutiny of Canadian military sales and would permit close monitoring of the effectiveness of the Canadian export control system.

Disclosure of registry of countries:

In question eleven of the "Export Controls Policy Questions and Answers" (Q11) document regarding the guidelines, the Government states that it will not publish a list of countries to which military exports are "closely controlled". The reason given is that:

> It is not desirable that the presence or absence of any country on a list such as this be a matter of public controversy. Canada is a trading nation, and this Government encourages trade in peaceful goods with all nations. We would be loath to see Canadian exporters cut out of certain markets for non-military goods, as a result of our decision about a country's human rights record.

The Government appears to be suggesting that the identity of countries that Canada considers to be human rights violators, or countries involved in hostilities, should be secret. Yet surely one of the important ways in which Canada brings pressure to bear on human rights violators is by public condemnation of their activities.

Canadian churches and other human rights advocates have argued that such public condemnation would be more effective if it were linked to the withdrawal of certain forms of support for the regime, such as the provision of military goods. We have also argued that the identity of countries to be the object of Canadian government pressure should be a matter of public debate. In various submissions to the Government, the churches have called for an annual public review of the observance of human rights in countries of particular interest to Canada by a mandated parliamentary committee. The hearings would include testimony from national and international organizations concerned with human rights. As part of such a review, the Canadian government would also place before the public the data it uses when judgements are made about the human rights performances of particular countries. The Government would also make public the nature of commercial transactions (including the sale of military and strategic goods), and the criteria used to justify them.

The Government has already provided public lists for two of the categories of countries to which military exports are controlled. A public list has been available of countries which it considers to pose a threat to Canada and its allies - the COCOM-proscribed destinations, principally the Soviet Union and its Warsaw Pact allies. A public list is also available of countries under United Nations Security Council sanctions. The Government's argument that Canada, as a peaceful trading nation, might be cut out of certain markets for non-military goods if it published complete lists of

countries to which military exports are controlled is undercut by the fact that "trade in peaceful goods" continues with both the Soviet Union and its allies, and with the UN-proscribed destination, South Africa. Increases in Canadian trade with South Africa coincided with the imposition of the mandatory arms embargo.

A coherent policy regarding military exports should be able to withstand public scrutiny. If Canada's human rights concerns and its economic interests are in apparent conflict, then the conflict should be a matter for public and parliamentary debate, rather than for secret resolution by Cabinet.